

FILED OCT 24 2002

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENISE KELLY,

Plaintiff,

v.

SAP AMERICA, INC., and CIGNA  
HEALTHCARE,

Defendants.

Civil Action No. 02-CV-2955

**DEFENDANTS' UNCONTESTED MOTION  
TO SET DATE BY WHICH DEFENDANTS SHALL TO RESPOND  
TO THE SECOND AMENDED COMPLAINT FILED OCTOBER 11, 2002**

Defendants SAP America, Inc. ("SAP America") and CIGNA Healthcare ("CIGNA") (collectively, "Defendants"), by and through their attorneys, hereby move pursuant to Local Rule 7.1(a) to set a date certain by which they shall respond to the "Amended Complaint" filed on October 11, 2002 ("Second Amended Complaint") by Plaintiff Denise Kelly ("Ms. Kelly"). In support of their Motion, Defendants state as follows:

1. On July 15, 2002, Ms. Kelly filed a Complaint against SAP America, SAP AG and CIGNA. Ms. Kelly served SAP America and CIGNA with a Complaint containing the heading "AMENDED 7/15/02" ("Amended Complaint"), which appeared to be virtually identical to the Complaint filed with the Court.

2. On September 11, 2002, Defendants filed a Motion to Dismiss All Counts (A – K) of Plaintiff's Amended Complaint ("Defendants' Motion to Dismiss"), along with a memorandum of law in support thereof.

3. On September 19, 2002, the Court entered an order extending the time for Ms. Kelly to respond to Defendants' Motion to Dismiss to October 25, 2002

4. On or about October 21, 2002, SAP America received a copy of the Second Amended Complaint filed with the Court on October 11, 2002.

5. Ms. Kelly did not serve a copy of the Second Amended Complaint upon counsel of record for the Defendants.

6. On October 23, 2002, counsel for the Defendants informed Ms. Kelly that the Defendants would accept service of the Second Amended Complaint as of that date.

Accordingly, pursuant to Fed. R. Civ. P. 15(a), Defendants' response to the Second Amended Complaint is due on or before November 6, 2002. *See* letter to Denise Kelly from Tamsin J. Newman, Esq., dated October 23, 2002 (attached as Exhibit A).

7 Counsel for the Defendants requested that Ms. Kelly contact them immediately if she disagreed with the deadline of November 6, 2002 for responding to the Second Amended Complaint. As of the filing of this Motion, Ms. Kelly has not contacted counsel for the Defendants.

WHEREFORE, Defendants respectfully request that the Court grant their Motion and set a deadline of November 6, 2002, by which Defendants shall respond to the Second Amended Complaint.

Respectfully submitted,

  
James N. Boudreau (Id. No. 77891)  
Tamsin J. Newman (Id. No. 81001)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103

Attorneys for Defendants SAP America, Inc.  
and CIGNA Healthcare

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**Tamsin J. Newman**  
 215.963.5201  
[tnewman@morganlewis.com](mailto:tnewman@morganlewis.com)

October 23, 2002

Ms. Denise Kelly  
 15 North Elm Avenue  
 Newtown, PA 18940

Re: Denise Kelly v. SAP America, Inc. and CIGNA Healthcare; Civil Action No. 02-CV-2955

Dear Ms. Kelly:

This letter follows up on my attempts to contact you this afternoon at your phone number, 215-860-2039. The first time I called and asked for you, the person who answered hung up on me. The second time, the phone continued to ring and I was able to leave a voicemail message. As counsel for the Defendants in the above-referenced matter, I am contacting you directly because it is my understanding that you are not represented by counsel.

As I explained in my voicemail to you, in order to effect valid service, you must serve Morgan Lewis & Bockius LLP, as Defendants' counsel of record, with all documents that you file with the Court. Thus, since you did not serve this Firm with a copy of the Amended Complaint you filed on October 11, 2002, the Amended Complaint was not validly served.

Nonetheless, I will accept service of the Amended Complaint on behalf of the Defendants as of today's date. Accordingly, under Federal Rule of Civil Procedure 15(a), Defendants' response to your Amended Complaint will be due within ten (10) business days, on or before Wednesday, November 6, 2002. As I stated in my voicemail, if you disagree with this deadline, please contact me immediately at 215.963.5201.

Very truly yours,

Tamsin J. Newman  
 cc: James N. Boudreau, Esquire

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DENISE KELLY,**

**Plaintiff,**

**v.**

**SAP AMERICA, INC., and CIGNA  
HEALTHCARE,**

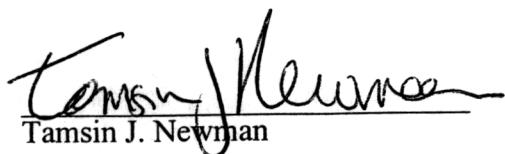
**Defendants.**

**Civil Action No. 02-CV-2955**

**CERTIFICATION OF TAMSIN J. NEWMAN  
PURSUANT TO LOCAL RULE 7.1(B)**

I, Tamsin J. Newman, under the penalties of perjury, depose and state as follows:

1. I am an attorney at Morgan Lewis & Bockius LLP. This Firm is counsel of record for the Defendants in the above-referenced matter.
2. On October 23, 2002, I left a voicemail for Denise Kelly at her home phone number. In my voicemail, I told Ms. Kelly that as of that date, I would accept service of the Second Amended Complaint filed on October 11, 2002 on behalf of the Defendants. I explained that under Federal Rule of Civil Procedure 15(a), Defendants' response to the Second Amended Complaint would be due within ten (10) business days (*i.e.*, on or before Wednesday, November 6, 2002). I asked Ms. Kelly to call me immediately if she disagreed with this time deadline. I confirmed the substance of my voicemail in a letter dated October 23, 2002. *See* Exhibit A.
3. Ms. Kelly has not telephoned me nor otherwise attempted to contact me in response to my voicemail.



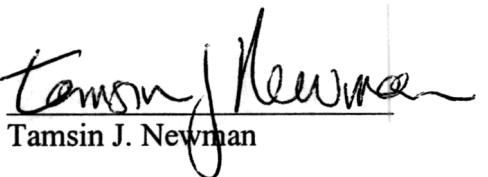
Tamsin J. Newman

DATED: October 24, 2002

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 24, 2002, a copy of the foregoing Uncontested Motion To Set Date By Which Defendants Shall Respond To The Second Amended Complaint Filed October 11, 2002 was served by U.S. Mail upon the following:

Denise Kelly  
15 North Elm Avenue  
Newtown, PA 18940

  
Tamsin J. Newman